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November 4, 2009

BY ECF

Hon. John Gleeson
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11202

Re: *Turkmen v. Ashcroft, et al.*
02 Civ. 2307(JG) (SMG)

Dear Judge Gleeson,

We represent intervenors Silvan Kurzberg, Paul Kurzberg, Yaron Shmuel, and Omer Gavriel Marmari ("Intervenors"), who were permitted to intervene in this action pursuant to an order dated August 31, 2004 (docket entry #94).

As Your Honor may recall, after intervening in this action, the Intervenors had filed their own independent action asserting similar claims, *Kurzberg v. Ashcroft*, 04 Civ. 03950 (JG) (SMG). That independent action was ultimately dismissed for insufficient service of process. Since the dismissal was for insufficient service, it was without prejudice. *See In re South African Apartheid Litigation*, 2009 WL 1788051 (S.D.N.Y. June 22, 2009) (Absent perfected service, a court lacks jurisdiction to dismiss an action with prejudice, and therefore dismissal for insufficiency of service must be without prejudice.).

Notwithstanding the dismissal of their independent action, the Intervenors' claims have been preserved since they are members of the plaintiff class in the *Turkmen* action. *See, e.g., Am. Pipe & Const. Co. v. Utah*, 414 U.S. 538, 553 (1974).

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We note that the *Turkmen* plaintiffs have submitted a letter dated November 2, 2009 (docket #683) in which they seek leave to file an amended complaint substituting new plaintiffs for previously named class representatives whose claims have now been settled.

The Intervenor consent to the *Turkmen* plaintiffs filing an amended complaint at this time.

Additionally, at this juncture, the Intervenor wish to clarify that they have appeared in this action, are members of the plaintiff class, and are exercising their rights to participate in this action and to appear through an attorney (the undersigned) in addition to class counsel. *See* FED. R. CIV. P. 23(c)(2)(B)(iv) ("a class member may enter an appearance through an attorney if the member so desires.").

Respectfully yours,

S/

Robert J. Tolchin

Cc: All counsel of record by ECF